

17.04: Standards of Conduct for Qualified Investment Managers and Consultants

In addition to the standards of conduct for fiduciaries and the standards set forth in 840 CMR 1.00 Qualified Investment Managers shall comply with 840 CMR 17.04. 840 CMR 17.04 shall also apply to Consultants retained pursuant to 840 CMR 25.00.

(1) Compliance with Applicable Law, Regulations, Code of Ethics and Standards of Conduct.

(a) Knowledge of and Compliance with Applicable Law, etc. Every qualified investment manager and every consultant shall be familiar with and comply with all applicable laws and rules and regulations, including rules and regulations of any self-regulatory agency of the profession, the standards of conduct of 840 CMR 17.03 and 17.04 and the code of ethics of 840 CMR 17.02.

(b) Assisting Legal and Ethical Violations Prohibited. No qualified investment manager or consultant shall knowingly participate in, or assist any act in violation of any statute or regulation governing securities matters or any act in violation of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04.

(c) Use of Material Non-Public Information Prohibited. Every qualified investment manager and every consultant shall comply with all laws and regulations relating to the use of material non-public information. No qualified investment manager or consultant shall communicate or take investment action on the basis of such information until it is publicly disseminated and any qualified investment manager or consultant who acquires such information, other than as a result of a special or confidential relationship with an issuer, shall make reasonable efforts to achieve public dissemination of such information by the issuer.

(2) Supervision of Employees. Every qualified investment manager and every consultant shall exercise reasonable supervision over employees and agents subject to his or her control to prevent violation by such persons of applicable statutes, regulations, the code of ethics of 840 CMR 17.02 and the standards of conduct of 840 CMR 17.03 and 17.04.

(3) Investment Recommendations and Actions.

(a) Reasonable judgment. Every qualified investment manager and every consultant shall exercise diligence and thoroughness in making investment recommendations and/or in taking investment actions for a retirement board and shall:

1. have a reasonable and adequate basis for each investment recommendation and action, supported by appropriate research and investigation; and
2. maintain appropriate records to support the reasonableness of each investment recommendation and action.

(b) Portfolio Investment Recommendations and Actions. Every qualified investment manager and every consultant shall, when making an investment recommendation or taking an investment action for any portfolio or retirement board, consider its appropriateness and suitability for that particular portfolio or board. In doing so, the qualified investment manager and consultant shall take

into account the needs and circumstances of the board, the basic characteristics of the portfolio and the basic characteristics of the investment involved. Every qualified investment manager and every consultant shall use reasonable judgment in determining the factors to be considered and the weight to be given to each factor and shall distinguish between fact and opinion in presenting investment recommendations.

(4) Misrepresentation Prohibited. No qualified investment manager or consultant shall make any statement, orally or in writing, which materially misrepresents the services that the qualified investment manager or consultant is capable of performing for the board, the qualifications of the qualified investment manager or consultant, the investment performance that the qualified investment manager has achieved or can be expected to achieve for the board or the expected performance of any investment. No qualified investment manager or consultant shall make any unsupported statement concerning these matters or any statement, orally or in writing, about any investment which guarantees or conveys any unsupported assurances, explicitly or implicitly.

(5) Fair Dealing With Retirement Boards. Every qualified investment manager and every consultant shall act in a manner consistent with the qualified investment manager's and consultant's obligation to deal equitably with a board when making investment recommendations, making material changes in prior investment advice, and taking investment action.

(6) Priority of Transactions. Every qualified investment manager and consultant shall conduct himself or herself in such a manner that transactions for the retirement board have priority over personal transactions, and that personal transactions do not operate adversely to the board's interest. A qualified investment manager making a recommendation about the purchase or sale of a security shall give the board adequate opportunity to act on the recommendation before acting on the qualified investment manager's own behalf.

(7) Disclosure of Conflicts.

(a) Every qualified investment manager, and every consultant when making an investment recommendation or taking an investment action, shall disclose to Commission and the board in writing any conflict of interest the qualified investment manager or consultant may have and any beneficial ownership of the securities involved which could reasonably be expected to impair the qualified investment manager's or consultant's ability to render unbiased and objective advice.

(b) Every qualified investment manager, and every consultant shall disclose to the Commission and the board in writing all matters which could reasonably appear to interfere with the qualified investment manager's or consultant's duty to the board or ability to render unbiased and objective advice.

(c) Every qualified investment manager, and every consultant shall also comply with all requirements as to disclosure of conflicts of interest imposed by law and by rules and regulations of organizations governing the activities of investment advisors and shall comply with any prohibition of such activities if a conflict of interest exists.

(8) Compensation.

(a) Disclosure of Additional Compensation Arrangements. Every qualified investment manager, and every consultant shall inform the Commission and the board of any arrangements, oral or in writing, for compensation or other benefit received or expected to be received by the qualified investment manager or consultant or a related person from others in connection with the qualified investment manager's or consultant's services to the board.

(b) Disclosure of Referral Fees. Every qualified investment manager and every consultant shall disclose to the Commission and the board any compensation paid or expected to be paid, directly or indirectly, by the qualified investment manager or consultant or a related person to others for referring the services of the qualified investment manager or consultant to the board.

(9) Relationships with Others.

(a) Preservation of Confidentiality. Every qualified investment manager and every consultant shall preserve the confidentiality of information communicated by the board concerning matters within the scope of the confidential relationship, unless the qualified investment manager or consultant receives information concerning illegal or potentially illegal activities on the part of any fiduciary or employee of the board. Any knowledge of illegal or potentially illegal activities on the part of any fiduciary or employee of the board shall be conveyed to all the members of the board and the Commission.

(b) Maintenance of Independence and Objectivity. Every qualified investment manager and every consultant, in relationships and contacts with an issuer of securities, whether individually or as a member of a group, shall use particular care and good judgment to achieve and maintain independence and objectivity.

(10) Enforcement and Liability.

(a) Every qualified investment manager and every consultant shall be deemed to have agreed with the retirement board:

1. to be liable to the board for any losses due to any violation of the provisions of M.G.L. c. 32, § 23 or of 840 CMR 17.00 including without limitation, any violation of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04;
2. to be subject to removal as a qualified investment manager or consultant by the Commission in the event that the Commission determines that the qualified investment manager or consultant has violated any of the provisions of M.G.L. c. 32, § 23 or of 840 CMR 17.00, including, without limitation, any provision of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04; and
3. that neither the board nor the Commission shall be liable to the qualified investment manager or consultant for any such loss, by way of indemnity or otherwise, or for any such removal.

(b) No qualified investment manager or consultant removed by the Commission pursuant to 840 CMR 17.04(10)(a)2. shall continue to serve or be employed as a qualified investment manager or as a consultant by any other retirement board except as may otherwise be authorized by the Commission.

REGULATORY AUTHORITY

840 CMR 17.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.